IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 33142 of 2007(U)

OS.706/2004 OF MUNSIFF COURT, KODUNGALLUR.

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PETITIONER:

V.SIVARAMAKRISHNAN,
S/O.T.NARAYANA MENON, 'SREE KALEESWARI',
PADAKULAM, LOKAMALESWARAM VILLAGE,
KODUNGALLUR TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR.

RESPONDENT:

M.V.BABU, MULLASSERIL HOUSE,
NEAR VAZHUR TEMPLE, P.VEMBALLUR,
SREENARAYANAPURAM VILLAGE, KODUNGALLUR TALUK,
PIN - 680 671.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.33142 OF 2007

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Dated this the 12th day of November 2007

JUDGMENT

This writ petition is filed against the order in I.A.No.1174/2006 in O.S.No.706 of 2004 passed by the Munsiff's Court, Kodungallur to strike off the issue. After hearing, the court found that the bank is a necessary party and therefore issue regarding non joinder was not struck off. Ext.P3 would also reveal that the first issue raised in the suit is whether the suit is bad for non-joinder of necessary party?. A perusal of paragraphs 9 and 10 of the writ statement would also reveal that such an issue has to be raised. It is only on the basis of the pleadings, the courts have to frame issues. If a person is not a necessary party the plaintiff need not take steps. But, at the same time, ultimately if it is found that he is a necessary party the suit may have to be dismissed for non-joinder of necessary parties. Just because the plaintiff's prayer to strike off the issue is not allowed, the suit need not be dismissed and the court can proceed with the trial and if ultimately the plaintiff is able to establish before the court the junction of the party is not necessary, then there will not be any defect in the suit. But, on the contra,

if it is found that the bank is a necessary party and in spite of notice, the plaintiff had not taken steps, he has to suffer the consequences.

With these observations, the writ petition is disposed of.

M.N.KRISHNAN, JUDGE

Cdp/-